

COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE OFFICE OF ENERGY & ENVIRONMENTAL AFFAIRS
DEPARTMENT OF ENVIRONMENTAL PROTECTION
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THE OFFICE OF APPEALS AND DISPUTE RESOLUTION

September 23, 2014

In the Matter of
River Run WWTF

Docket No. 2010-049
File No. SE0-890
Wareham

AMENDED FINAL DECISION

In August 2010, the Buzzards Bay Coalition, Inc., f/k/a Coalition for Buzzards Bay, Inc. (“the Coalition”) brought this appeal challenging a Groundwater Discharge Permit (“Permit”) that the Department’s Southeast Regional Office issued to Agawam Development, LLC (“ADM”) pursuant to the Massachusetts Clean Water Act (“MCWA”), G.L. c. 21, §§ 26-53, the Massachusetts Surface Water Quality Standards, 314 CMR 4.00, and the Groundwater Permit Program Regulations, 314 CMR 5.00. Amended Settlement Agreement, ¶¶ 1-5. The Permit authorized ADM to discharge treated effluent from a Private Sewage Treatment Facility (“PSTF”) to be constructed by ADM as part of the Redbrook Development f/k/a/River Run Development Project (“the Development”) on a 381 acre site located off of Wareham Road in Plymouth, Massachusetts (“the Site”). *Id.*, ¶¶ 1-2. The Development will be a mixed use development with 1,175 residential units, up to 60,000 square feet of retail, office and service

space, and 75,000 square feet of recreational facilities. The PSTF will treat sewage generated by the Development. Id.

The Coalition challenged the Permit because in its view the nitrogen loading evaluation conducted for the Development underestimated the amount of nitrogen that would enter the Agawam/Wareham River Estuarine Watershed (“AWREW”) each year. Id., ¶ 3. The Coalition also contended that the Permit would not adequately offset the increased nitrogen load to the AWREW from the Development, and that an offset to reduce existing sources of nitrogen in a quantity at least equal to the amount of new nitrogen discharged from the Development was required. Id.

In December 2010, the Coalition’s appeal of the Permit was settled by a written agreement of the Parties which was approved by the Department’s Commissioner in a Final Decision adopting the settlement pursuant to 310 CMR 1.01(8)(c) (“the 2010 Settlement Agreement”). Id., ¶¶ 5-12. The 2010 Settlement Agreement left open for further study the nitrogen mitigation measures that ADM was to undertake in connection with the Development. Id., ¶¶ 6-22. Recently, the Parties filed an Amended Settlement Agreement for my review and approval addressing these nitrogen mitigation measures. Id. If approved, the Amended Settlement Agreement will supersede the 2010 Settlement Agreement. Id., ¶ 25. After reviewing the Amended Settlement Agreement and for the reasons set forth below, I find that the Agreement is reasonable and furthers the statutory and regulatory interests of the MCWA, the Massachusetts Surface Water Quality Standards, 314 CMR 4.00, and the Groundwater Permit Program Regulations, 314 CMR 5.00 because the Agreement requires ADM to take certain actions to prevent the discharge of any net additional nitrogen to the AWREW resulting from the

Development. Id., ¶¶ 6-22.

The 2010 Settlement Agreement acknowledged that the proposed PSTF would discharge treated effluent into the AWREW. Id., ¶ 6. As part of the settlement, the Department determined that the AWREW was not satisfying the Massachusetts Surface Water Quality Standards, 314 CMR 4.00, because the AWREW was impaired by excessive nitrogen. Id. The Department also determined that it was necessary and appropriate for the Permit to require ADM to mitigate the nitrogen impact of the Development by taking action to ensure that the project resulted in the discharge of no net addition of nitrogen to the AWREW. Id., ¶ 7.

The Parties agreed in the 2010 Settlement Agreement that the Department needed additional information to more accurately estimate the amount of nitrogen that the Development would discharge to the AWREW and the amount of nitrogen offsets that would ensure that the Development resulted in no net discharge of additional nitrogen to the AWREW. Id., ¶ 9. As a result, and in accordance with 314 CMR 5.12, the Department issued a Modified Groundwater Discharge Permit (the “Modified Permit”) requiring ADM to install additional groundwater monitoring wells and surface monitoring stations and the monitoring of additional parameters at the Site. Id., ¶ 10.

Supplemental Condition No. 20 at page 9 of the Modified Permit provides that “the [AWREW] is impaired due to nitrogen” and that “[b]ased on surface water quality impacts within the [AWREW] the Modified Permit includes the following measures which are expected to achieve a no net nitrogen load impact as a result of the discharge”:

- (1) [e]liminat[ion] [of] the use of nitrogen in any fertilizer on bogs as identified In Appendix A [to the Modified Permit], provided however that [ADM] may pursue and implement [alternative] measures . . . [if ADM] demonstrates that such measures provide at least equivalent nitrogen reduction . . . ;

(2) [p]rohibit[ion] [of] the application of nitrogen-based fertilizers for any lawn and/or landscape maintenance within the project's boundaries;

(3) [r]eserv[ation] [of] approximately 52,000 gallons per day excess treatment capacity at the treatment facility and in the associated collection system in order to connect existing properties within proximity of the development and located within the [AWREW];

(4) [c]reat[ion] . . . of \$500,000.00 [fund] to be used to reduce other sources of nitrogen within the [AWREW]; and

(5) [m]itigation measures as described in Appendix A of the Modified Fact Sheet.

Id., ¶ 12.

On May 9, 2014, in accordance with the 2010 Settlement Agreement, ADM submitted to the Department for its review and approval, a Final Report providing ADM's final estimates of groundwater flow to be discharged from the PSTF to the AWRE. Id., ¶ 13. Although the Parties did not achieve a consensus on all aspects of the Final Report, they reached an understanding on how best to address the nitrogen impacts from the Development to the AWREW and set forth their understanding in their Amended Settlement Agreement that is before me for review. Id.,

¶ 15. Specifically, the parties have agreed in the Amended Settlement Agreement that:

the Actual Nitrogen Impact from the Development will be determined by taking the product of Average Daily Flow from the PSTF and the Average Nitrogen Effluent Concentration from the PSTF and the Adjustment Factor. (Actual Average Daily Flow (gallons per day ("gpd")) x Actual Effluent N (milligrams per liter (mg/l) x Adjustment Factor ("AF"))= Actual Nitrogen Impact (lbs/yr)).

Id., ¶ 17. The Amended Settlement Agreement also requires ADM to offset the Development's Actual Nitrogen Impact by taking the following actions:

- (1) complete the first Nitrogen Offset within 30 months after the commencement of operation of the PSTF and complete subsequent Nitrogen Offsets annually on the anniversary of the first Nitrogen Offset completion date; and

- (2) within 60 days after completion of the Nitrogen Offset, submit for the Department's approval, with a simultaneous copy to the Coalition, a description of the mitigation measures completed together with a map illustrating the location of the Nitrogen Offset.

Id., ¶ 18.

In the Amended Settlement Agreement, ADM has also agreed to use several mitigation strategies to offset the Actual Nitrogen Impact to the AWREW. Id., ¶ 19. Specifically, ADM has reaffirmed its previous obligation under the 2010 Settlement Agreement to create a \$500,000.00 fund to be used to reduce other sources of nitrogen within the AWREW. Id. The Amended Settlement Agreement provides that in the event that the Town of Wareham extends sewer service to areas in the lower AWREW, ADM will work in good faith with the Coalition, the Town of Wareham, and the Department to use the \$500,000.00 funds for residential sewer connections in neighborhoods pursuant to the conditions set forth in the Agreement. Id.

Under the Amended Settlement Agreement, ADM may also mitigate the nitrogen impacts from the Development by halting its use of nitrogen-based fertilizer in bogs on the Site in accordance with the methodology set forth in the Agreement. Id., ¶¶ 20, 22. In accordance with Appendix A of the Modified Permit and with the Department's approval, ADM may also utilize alternative mitigation measures that may become viable over time. Id., ¶ 20. ADM may also use the 52,000 gallons per day capacity at the PSTF that has been reserved for non-Development flows within the AWREW (as required by the Modified Permit in Supplemental Condition 20) to offset nitrogen impacts from the Development. Id., ¶¶ 21, 22.

In sum, I issue this Amended Final Decision approving and incorporating the Amended Settlement Agreement that the Parties have reached. The Parties agree that upon the issuance of this Amended Final Decision, ADM and the Coalition, except as provided for in the Amended Settlement Agreement, waive their rights to appeal the Modified Permit by requesting an

adjudicatory hearing. Amended Settlement Agreement, ¶¶ 24-30. ADM and the Coalition have also agreed to waive any rights to: (1) further administrative or judicial review of the Modified Permit including the right to appeal the Modified Permit to any other agency or to any court; (2) rehearing, re-argument, and reconsideration; (3) any notice of rights of appeal, rehearing and reconsideration; and (4) a Recommended Final Decision. Id.

A handwritten signature in cursive script, appearing to read "D. W. Cash", written in black ink on a white background.

David W. Cash, Ph.D.
Commissioner

SERVICE LIST

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